

# Exhibit 12

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

2 -----x  
3 UNITED STATES OF AMERICA,

4 versus  
5

10 cr 511 (JBW)

6 CHARLES NAGEL,

7 DEFENDANT.

U.S. Courthouse  
Brooklyn, New York

8 -----x  
9 November 5, 2010  
10 9:30 a. m.

11 TRANSCRIPT OF TRIAL

12 Before the HONORABLE JACK B. WEINSTEIN, USDJ

13 APPEARANCES

14 Representing the Government: Loretta E. Lynch  
15 United States Attorney  
16 Eastern District of New York  
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18 Brooklyn, New York 11201  
19 BY: ALLON LIFSHITZ, ESQ.  
20 CELIA COHEN, ESQ.  
21 MARGO BRODIE, ESQ.

22 Representing the defendant: ROBERT DATNER, ESQ.  
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25

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31 Proceedings recorded by mechanical stenography. Transcript  
32 produced by computer-aided transcription.

LISA SCHMID, CCR, RMR

LIFSHITZ/SUMMATIONS

1                   Where is your client?

2                   Take this down, would you, please?

3                   MR. LIFSHITZ: Yes. (Complies.)

4                   (Pause in proceedings.)

5                   (Jury enters.)

6                   THE COURT: Be seated, please. Now, you'll read that  
7 set instructions along with me, so don't read up ahead.

8                   I'm going to instruct you now on the law, ladies and  
9 gentlemen, and you'll be able to carry these instructions -- is  
10 it can you hear me? Can you hear me now?

11                  JURORS: (All answered affirmatively.)

12                  THE COURT: Thank you.

13                  Ladies and gentlemen, I'm going to tell you what the  
14 law is. Do not read ahead. Read the instructions along with  
15 me. You'll take the instructions into the room where you'll  
16 deliberate.

17                  I have no view of the guilt or innocence of this  
18 defendant. Nothing I have said or done should be used by you,  
19 in inferring that I have such a view. It's you who will decide  
20 the case, and you will decide it on the evidence before you, or  
21 the lack of he evidence, and according to the law.

22                  You can assume that any evidence before you was  
23 obtained legally. It's the Court's responsibility, not the  
24 jury's, to decide on punishment, should you find the defendant  
25 guilty of any crime.

JURY CHARGE

1                   You will have a list of documents and materials that  
2 were admitted. And any of the testimony that you wish to have  
3 before you, I will either call you in to hear it read back, or  
4 send you a transcript, should you request that.

5                   Of course, try to be as limited as you can be in what  
6 you request, so we don't have to go over the whole trial again.  
7 But whatever you want, we'll try to get for you, and then when  
8 you have heard enough, you can raise your hand or if you have  
9 the transcript, you can stop reading.

10                  And you can have any of the physical evidence sent  
11 into you. The audio, of course, will have to be looked at,  
12 should you want the look at it in court.

13                  And should you require any further instruction on the  
14 law, you can, as in any other instance, send in a note to the  
15 Marshal who will be guarding you.

16                  You're not to discuss this case with anyone except  
17 within the jury room, when all 12 jurors are present.

18                  During the trial, there were objections made and  
19 rulings made. Draw no inferences from them. If an objection  
20 was made and sustained to a question, you'll disregard the  
21 question. And an unanswered question has no bearing  
22 whatsoever. I gave limiting instructions in a few instances,  
23 and you'll follow those instructions.

24                  The fact that the prosecution is brought in the name  
25 of the United States does not entitle the government to any

JURY CHARGE

1 greater consideration than the defendant. Everybody is equal  
2 in this court. No one is entitled to any sympathy or favor.  
3 The issue is whether the government has proved the defendant  
4 guilty beyond a reasonable doubt of either or both of the  
5 crimes charged.

6 You'll have to give the evidence the weight you think  
7 it deserves. You'll analyze that evidence dispassionately and  
8 rationally, without prejudice or emotion, and you can draw  
9 reasonable inferences from the evidence.

10 The defendant is on trial only for the crimes charged.  
11 And each of these crimes must be decided separately.

12 If the defendant is not proven guilty beyond a  
13 reasonable doubt of the crime charged, do not find him guilty  
14 because you think he or someone else may have done something  
15 bad which was not charged or that he harmed someone other than  
16 Ms. Erbe.

17 The evidence of the reactions of Ms. Erbe's daughter,  
18 brother, former husband or anyone else were introduced only to  
19 show the state of mind of the defendant towards Ms. Erbe and  
20 her state of mind. Those are the key factors in the case,  
21 states of mind.

22 The exact dates of the offense don't have to be  
23 proven. It's approximate.

24 The testimony from the witnesses and exhibits are  
25 evidence, and your inferences are important.

JURY CHARGE

1                   Lawyers' questions, as I indicated, without answers,  
2 arguments and opening and closing statements are not evidence.  
3 And that chart that was used by the government is argument and  
4 therefore, will not go into the jury room.

5                   You're going to have to decide which testimony to  
6 believe and which testimony not to believe. Consider the  
7 witness' demeanor, the manner of testifying, his or her  
8 opportunity to see, hear, know about the events described, the  
9 witness' ability to recall and describe those things, the  
10 reasonableness of the testimony in the light of all of the  
11 other evidence in the case, and the interest of the witness in  
12 the outcome of the trial.

13                  Consider whether part of a witness' testimony was  
14 contradicted or supported by other evidence, testimony or  
15 exhibits by what the witness said or did on a prior occasion,  
16 and by any other evidence in the case.

17                  If you find that a witness has willfully testified  
18 falsely as to an important matter, you may disregard the entire  
19 testimony of that witness, or you may accept part of the  
20 testimony and disregard what you find to be false. A witness  
21 may have been mistake on may even have lied with respect to  
22 part of the testimony, but be reliable as to other parts.

23                  The attorneys, of course, interview witnesses outside  
24 of court and prepare for trial by use of people who do  
25 investigations.

JURY CHARGE

1                   You've heard evidence concerning what people outside  
2 the courtroom have said about events. You're entitled to  
3 consider these statements as evidence. In evaluating them,  
4 remember they were not cross-examined before you, in some  
5 instances, and therefore, in considering the probative value or  
6 force of those statements who have not testified, you're going  
7 to have to apply indirectly the same credibility tests that you  
8 apply with respect to individuals who have testified.

9                   The defendant had a right, constitutionally, not to  
10 testify, and not to have this held against him. He did  
11 testify. You should evaluate his testimony just as you would  
12 the testimony of any witness with an interest in the outcome of  
13 the case.

14                   The attorneys and the defendant entered into  
15 stipulations, that is, a stipulation should be accept as true.

16                   There's no legal requirement that the government prove  
17 its case through any particular means.

18                   An indictment is an accusation in writing. It is not  
19 evidence of guilt. It is entitled to no weight in your  
20 judgment of the facts.

21                   The government is the only party that bears a burden  
22 of proof. That burden is to prove guilt beyond a reasonable  
23 doubt with respect to each element of the crime charged. The  
24 burden never shifts. The defendant never has a burden of  
25 proving anything. If the government fails to carry its burden

JURY CHARGE

1 of proof as to any element of an offense, you must find the  
2 defendant not guilty of that offense.

3 Whenever I say the government must prove something, I  
4 mean it must prove it beyond a reasonable doubt. When I say  
5 you must find something, you must find it beyond a reasonable  
6 doubt.

7 A reasonable doubt is the kind of doubt that would  
8 cause a reasonable person to hesitate to act in matters of the  
9 most importance in his or her own affairs. Proof beyond a  
10 reasonable doubt is proof of such a convincing character that a  
11 reasonable person would not hesitate to rely and act upon it in  
12 the most important of his or her affairs.

13 A defendant is presumed to be innocent. That  
14 presumption remains with him throughout the trial, and must be  
15 considered by you in your deliberations.

16 A jury's decision must be unanimous. All of you must  
17 agree on a verdict.

18 There are two counts or charges. First, interstate  
19 stalking and travel. The charge is that, "On or about and  
20 between July 15th, 2008 and March 24th, 2010, both dates being  
21 approximate and inclusive, within the Eastern District of New  
22 York and elsewhere -- and the Eastern District includes all of  
23 Long Island, Brooklyn, Queens and Staten Island -- the  
24 defendant, Charles Nagel, also known as "Chaz Rose," "Cindy  
25 Momberger," "Miranda S." and "Angela Paterson," did knowingly

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1 and intentionally travel in interstate commerce, with the  
2 intent to harass another person, to wit: Kathryn Erbe, and in  
3 the course of and as a result of such travel, did cause  
4 substantial emotional distress to Kathryn Erbe."

5 The relevant statute criminalizes traveling in  
6 interstate or foreign commerce -- here, interstate commerce --  
7 with the intent to harass another person, which results in  
8 substantial emotional distress to that person.

9 The statute reads: "Whoever traveled in interstate  
10 commerce with the intent to harass another person, and in the  
11 course of or as a result of such travel, causes substantial  
12 emotional distress to that person is guilty of a crime."

13 To prove guilt, the government must prove each of the  
14 following three elements. First, that between those dates,  
15 July 15th, 2008 and March, 24th, 2010, approximately, the  
16 defendant knowingly and intentionally traveled in interstate  
17 commerce, as charged in the indictment.

18 To act intentionally is to act deliberately and  
19 purposefully. To act knowingly is to act intentionally and  
20 voluntarily to commit a criminal action, and to commit that  
21 action not because of ignorance, mistake, accident or  
22 carelessness.

23 Travel in interstate commerce means travel between two  
24 states. Philadelphia is in Pennsylvania. Other incidents  
25 occurred, according to the testimony, in New York.

JURY CHARGE

1                   Second, that the defendant traveled with the intent to  
2 harass Kathryn Erbe. Harass means to annoy persistently, or to  
3 create an unpleasant or hostile situation, especially by  
4 uninvited and unwelcomed verbal or physical conduct.

5                   What starts out as an intent to become friendly or  
6 even a lover may turn to harassment.

7                   Some interstate commerce must take place with the  
8 intent to harass. There were two trips. The first one was not  
9 relied on. It's the second trip that's relied on in this  
10 count. You understand that?

11                  JURORS: (All answered affirmatively.)

12                  THE COURT: The ultimate fact of intent, through  
13 subjective, may be established by circumstantial evidence.  
14 That is, by drawing inferences based on the defendant's outward  
15 manifestations, words, conduct, acts and all the surrounding  
16 circumstances disclosed by the evidence, and the rational.  
17 logical inferences that may be drawn from them.

18                  Third, that in the course of or as a result of such  
19 travel, the defendant caused substantial emotional distress to  
20 Kathryn Erbe.

21                  To establish substantial emotional distress, the  
22 government must prove that as a result of the defendant's  
23 conduct during or after the travel in interstate commerce with  
24 intent to harass Kathryn Erbe, suffered substantial emotional  
25 distress and that an ordinary and reasonable person in Ms.

JURY CHARGE

1 Erbe's position would have experienced substantial emotional  
2 distress under those circumstances.

3 The term "substantial emotional distress" has its  
4 ordinary meaning. Substantial means important enough to be of  
5 consequence and concern to a reasonable person. Emotion means  
6 of the mind, that is, feelings, spirit or psyche. Distress  
7 means greatly troubled mind, mental stress or strain or mental  
8 anxiety.

9 The second charge is interstate stalking by a  
10 communication facility of interstate commerce.

11 Count 2 charges the defendant with using the mail or  
12 other communication facilities such as the internet, email or  
13 Facebook with the intent to harass and cause substantial  
14 emotional distress to another person.

15 It reads: "On or about and between July 15th, 2008,  
16 and March 24th, 2010, approximately, within the Eastern  
17 District of New York and elsewhere, the defendant, Charles  
18 Nagel, also known as "Chaz Rose," "Cindy Momberger," "Miranda  
19 S.," and "Angela Patterson," with the intent to harass and  
20 cause substantial emotional distress to a person in another  
21 state, to wit: Kathryn Erbe, did knowingly and intentionally  
22 use the mail and interactive computer service and a facility of  
23 interstate commerce to engage in a course of conduct that  
24 caused substantial emotional distress to Kathryn Erbe."

25 The statute reads. "Whoever, with intent to harass or

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1 cause substantial emotional distress to a person in another  
2 state, uses the mail any interactive computer service or any  
3 facility of interstate commerce to engage in a course of  
4 conduct that causes substantial emotional distress to that  
5 person shall be guilty of a crime." And there are four elements  
6 in that crime.

7 First, that between those dates listed, the defendant  
8 communicated while he was in one state with a person in  
9 another, with intent to harass Kathryn Erbe.

10 Second, that the defendant communicated through the  
11 mails or an interactive computer service or a facility of  
12 interstate commerce, intending to harass Kathryn Erbe.

13 Use of mails means that the communication was  
14 deposited in the mail for delivery by the United States Postal  
15 Service.

16 Transmission of a communication by means of the  
17 telephone or internet constitutes transportation in a facility  
18 of interstate commerce, and it does not depend upon whether the  
19 communication actually crossed a state line. That is, it can  
20 be within one state.

21 The specific communication in question must have been  
22 transmitted by mail, internet or other facility I've described.

23 And interactive computer service is any information  
24 service system or access software provider that provides or  
25 enables computer access by multiple users to a computer server,

JURY CHARGE

1 including a service assistant that provides access to the  
2 internet.

3 Third, that the defendant engaged in a communication  
4 such as I've described during a course of conduct while he  
5 specifically intended to harass Kathryn Erbe. A course of  
6 conduct means a pattern of conduct composed of two or more  
7 acts, evidencing a continuity of purpose to harass Kathryn  
8 Erbe.

9 The purpose needs to extend over an appreciable time  
10 span, but may be for only a portion or part of the period  
11 charged in the indictment.

12 I've already defined to you the term "harass."

13 And fourth, that as a result of that course of  
14 conduct, Ms. Erbe experienced substantial emotional distress.  
15 And I've described that to you already.

16 Now, those are the crimes.

17 You have at the back of the charge a verdict sheet.  
18 You indicate your unanimous verdict when you reach it. On each  
19 of the two counts, you can reach a verdict of not guilty or  
20 guilty. If you cannot reach a unanimous verdict, you will  
21 report that to the Court in writing.

22 Do not communicate with anyone else outside the jury  
23 room except the Court, through the Marshal, with respect to  
24 this case. The written communication should be signed by your  
25 foreperson, asking for assistance on the law or the evidence.

JURY CHARGE

1           If you are divided, cannot reach a unanimous verdict,  
2 tell me in the note. Do not tell me in the note what the  
3 division is. If you have reached a verdict, don't indicate in  
4 your report what the verdict is, because that will be announced  
5 in the court.

6           You're to render your verdict without fear, without  
7 favor, without prejudice and without sympathy.

8           Now, it's a simple verdict sheet: Interstate  
9 stalking, travel, Count 1, not guilty or guilty. Interstate  
10 stalking communication facility through interstate commerce,  
11 Count 2, not guilty or guilty.

12           Do the parties wish to see me at the sidebar?

13           MR. LIFSHITZ: No, Your Honor.

14           MR. DATNER: No, Your Honor.

[REDACTED]

[REDACTED]